

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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E [REDACTED] C [REDACTED], an infant, by his mother and legal guardian,
CAROLYN CRUZ,

ECF CASE

Plaintiffs, **COMPLAINT**

-against-

06 CV 8134 (AKH) (MHD)

THE CITY OF NEW YORK, POLICE OFFICER JAMES
NIELSEN (Shield no. 20241), POLICE OFFICER JOHN
DOE,

Jury Trial Demanded

Defendants.

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PRELIMINARY STATEMENT

1. This is a civil rights action in which the plaintiff seeks relief for the violation of his rights secured by 42 U.S.C. § 1983, the Fourth and Fourteenth Amendments to the United States Constitution, and the laws of the State of New York. This case arises from a July 12, 2006 incident in which two members of the New York City Police Department (“NYPD”) subjected plaintiff to false arrest, excessive force, and assault and battery. Plaintiff seeks compensatory and punitive damages, declaratory relief, an award of costs and attorneys’ fees, and such other and further relief as the court deems just and proper.

JURISDICTION & VENUE

2. This action is brought pursuant to 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by the aforesaid statutes and 28 U.S.C. §§ 1331 and 1343.

3. Plaintiff invokes the supplemental jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide his state law claims of false arrest and assault battery. With

respect to these state law claims, a notice of claim was duly filed on the City of New York within 90 days of the incident, more than 30 days have elapsed since such filing, and the City has refused to settle plaintiff's state law claims.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because defendant City of New York is subject to personal jurisdiction in the Southern District of New York. Moreover, venue is proper pursuant to 28 U.S.C. § 1391(b) because the City of New York's deliberate indifference to plaintiff's federally protected rights took place in this district, specifically at NYPD Headquarters located at One Police Plaza, and at the office of the Civilian Complaint Review Board located at 40 Rector Street.

PARTIES

5. Plaintiff is resident of the State of New York, County of Kings.

6. The City of New York is a municipal corporation organized under the laws of the State of New York.

7. Police Officer James Nielsen is a member of the NYPD who was involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest, on July 12, 2006. Nielsen is sued in his individual capacity.

8. Police Officer John Doe is a member of the NYPD who was involved in the arrest of plaintiff, and the events arising out of plaintiff's arrest, on July 12, 2006. Doe is sued in his individual capacity.

STATEMENT OF FACTS

9. On July 12, 2006, at approximately 3:30 p.m., on the driveway of 1317 Dumont Avenue, Brooklyn, New York, Police Officer James Nielsen and one other officer of the 75th Precinct, identified herein as John Doe, stopped and seized plaintiff without cause.

10. In the course of seizing plaintiff, Officer Nielsen uttered racial slurs, aimed his firearm at plaintiff, threatened to shoot plaintiff, and threw plaintiff off the top of a van onto the floor.

11. When plaintiff landed on the floor, John Doe threw plaintiff to the ground and forcefully shoved his knee into plaintiff's back.

12. Officer Neilson then grabbed plaintiff by the hair, slapped plaintiff twice in the face, and slammed plaintiff's face onto the floor.

13. Thereafter, Officer Nielsen handcuffed plaintiff excessively tight causing marks to plaintiff's wrists. Plaintiff complained about the tightness of the cuffs but Nielsen refused to loosen them.

14. Officer Nielsen subsequently lifted plaintiff up by the chain linking the handcuffs causing the cuffs to dig further into plaintiff's wrists.

15. Eventually, plaintiff was released from custody and no charges were filed against him.

16. As a result of defendants' actions, plaintiff experienced physical injuries, emotional distress, fear, humiliation, discomfort, pain and suffering, and loss of liberty.

**FEDERAL CLAIMS AGAINST POLICE
OFFICER JAMES NIELSEN AND JOHN DOE**

17. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-16 as if fully set forth herein.

18. The conduct of Police Officer James Nielsen and John Doe, as described herein, amounted to false arrest and excessive force in violation of plaintiff's rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

**STATE LAW CLAIMS AGAINST POLICE
OFFICER JAMES NIELSEN AND JOHN DOE**

19. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-18 as if fully set forth herein.

20. The conduct of Police Officer James Nielsen and John Doe, as described herein, amounted to false arrest and assault and battery in violation of the laws of the State of New York.

**FEDERAL CLAIMS AGAINST THE CITY OF
NEW YORK**

21. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-20 as if fully set forth herein.

22. The City of New York directly caused the constitutional violations suffered by plaintiff.

23. Upon information and belief, the City of New York, at all relevant times herein, was aware from notices of claim, lawsuits, complaints filed with the City, and from the City's own observations, that the individual defendants are unfit, ill-tempered officers who have the propensity to commit the acts alleged herein. Nevertheless, the City of New York exercised deliberate indifference by failing to take remedial action. The City failed to properly train, retrain, supervise, discipline, and monitor the officers and improperly retained and utilized them. Moreover, the City of New York failed to adequately investigate prior complaints against the officers.

24. The aforesaid conduct by the City of New York violated plaintiff's rights under 42 U.S.C. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution.

**STATE LAW CLAIMS AGAINST THE CITY
OF NEW YORK**

25. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-15 as if fully set forth herein.

26. Because the individual defendants were acting within the scope of their employment as members of the NYPD during the incident in question, the City of New York is vicariously liable under state law for the false arrest and assault and battery of plaintiff.

27. Further, the City of New York is liable under state law because it negligently hired, trained, supervised, and retained the individual defendant officers.

WHEREFORE, plaintiff demands a jury trial and the following relief jointly and severally against the defendants:

- a. Compensatory damages in an amount to be determined by a jury;
- b. Punitive damages in an amount to be determined by a jury;
- c. Costs, interest and attorney's fees;
- d. Such other and further relief as this Court may deem just and proper, including injunctive and declaratory relief.

DATED: October 2, 2006
 Brooklyn, New York

CARDINALE & MARINELLI
26 Court Street, Suite 1815
Brooklyn, New York 11242
(718) 624-9391

By:

RICHARD J. CARDINALE (RC-8507)